

Burlington, N. C.
Zoning Ordinance

SECTION 32.15: BOARD OF ADJUSTMENT

- A. Board of Adjustment Created: A Board of Adjustment is hereby created. The word "board" when used in this section shall be construed to mean the Board of Adjustment.
- B. Number of Members - Appointment: The Board of Adjustment shall consist of 12 members. Six members shall be citizens and residents of the City of Burlington and shall be appointed by the City Council; six members shall be citizens of Alamance County to reside outside the City but within the extraterritorial jurisdiction boundaries of the City of Burlington as specified by an extraterritorial boundary ordinance adopted pursuant to North Carolina General Statutes 160A-360(b) and shall be appointed by the Board of Commissioners of Alamance County.

Members of the Board of Adjustment shall not succeed themselves after serving three full terms of three years each without an intervening period of one year. Each member's term shall commence on July 1st of the year of appointment and shall expire on June 30th of the last year of said member's term.

In the event a board member shall be appointed to serve a partial term, such partial term shall not be considered as having served a full term for the purposes of the limitation of succession as hereinabove set forth.

If a sufficient number of qualified applicants is not available to fill the vacant seats, the City Council or Alamance County Board of Commissioners may then extend the term of a current member at its discretion for a term of one year that may be extended for an additional term of one year as may be determined by the City or County.

It is further provided that an individual shall be eligible to serve on only one City board or commission at any one time. It is therefore expressly provided that concurrent membership on City boards and commissions shall not be permitted. **(Amendment adopted May 4, 1999)**

- C. Reserved
- D. Vacancies: Vacancies occurring for reasons other than unexpired remainder of the term shall be filled as they occur for the unexpired remainder of the term either by the City Council of the City of Burlington or the County Commissioners of Alamance County, depending upon the area represented. Faithful attendance at meetings of the board is considered a prerequisite to continued membership, and the City Council and/or Alamance County Commissioners may remove and replace any member continually delinquent in his duty to attend. **(Amendment adopted June 20, 1972)**
- E. Compensation: Members of the board shall receive no compensation for their services.
- F. Officers, Rules, Regulations, Jurisdiction and Voting: The Board of Adjustment shall elect a chairman and create and fill such other offices as it may determine. The term of the chairman and other officers shall be one year, with eligibility for re-election. The board shall adopt rules for the transaction of its business and shall keep a record of its members' attendance and its resolutions, discussions, findings and recommendations, which record shall be a public record. The board shall hold at least one meeting monthly, and all of its meetings shall be open to the public. **(Amendment adopted June 20, 1972)**

The five members appointed to the board by the Board of Alamance County Commissioners as representatives of the extraterritorial area outside the City shall have equal rights, privileges and duties with the other members of the board in all matters pertaining to the regulation of such extraterritorial area, both in preparation of the original regulations and the consideration of any proposed amendments to such regulations. On all matters pertaining to the regulation of the area within the corporate limits, only those board members appointed by the City Council of the City of Burlington to represent the area within the corporate limits shall vote. For taking action on any matter pertaining to the extraterritorial zoning area, there shall be present a quorum of three members from the extraterritorial area. For taking action on any matter pertaining to the area within the corporate limits, there shall be present a quorum of three members appointed to represent such area.

- G. Conduct of Hearings: All hearings of the board shall be open to the public. The board shall keep minutes of its proceedings showing the vote of each member upon each question and the absence or failure of any member to vote.
- H. Disposition of Appeals: The final disposition of each appeal shall be by recorded resolution indicating the reasons of the board therefor based on findings of fact and conclusive of law, all of which shall be public record.
- I. Appeals From Decisions of the Building Inspector: An appeal from the decisions of the Building Inspector may be taken to the Board of Adjustment by any person aggrieved or by any office, department, board or bureau of the City affected by such decision. Such appeal shall be taken within a reasonable time as provided by the rules of the board by filing with the Building Inspector and with the Board of Adjustment a notice of appeal specifying the grounds thereof.
- J. Appeal Stays All Proceedings: An appeal stays all proceedings in furtherance of the action appealed from, unless the Building Inspector certifies to the board, after the notice of appeal shall have been filed with him by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board or by a court of record on application on notice to the Building Inspector and on due cause shown.
- K. Powers of the Board of Adjustment: The board shall have the following powers:
 - 1. To Hear Appeals: To hear and decide appeals where it is alleged that there is error in any order, requirement, decision or determination made by the Building Inspector. The concurring vote of four-fifths of the members of the board shall be necessary to reverse any order, requirement, decision or determination of the Building Inspector, to decide in favor of the applicant on any matter that it is required to pass under the Zoning Ordinance or to effect any variation in such ordinance. **(Amendment adopted September 21, 1993)**

2. To Authorize Variances: To authorize upon appeal in specific cases such variance from the terms of this ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this ordinance will result in undue hardship and so that the spirit of this ordinance shall be observed and substantial justice done.

In considering all proposed variances to this ordinance, the board shall, before making any finding in a specific case, first determine that the proposed variance will not allow the establishment of a use not otherwise permitted in a district by this ordinance; extend in area or expand a non-conforming use of land; change the district boundaries shown on the Zoning Map; impair any adequate supply of light and air to adjacent property; materially increase the public danger of fire; materially diminish or impair established property values within the surrounding area; or in any other respect impair the public health, safety, morals and general welfare.

In granting a variance, the board may attach thereto such conditions regarding the location, character and other features of the proposed building, structure or use as it may deem advisable in furtherance of the purpose of this ordinance.

Before a variance is granted, it shall be shown that special circumstances attach to the property that do not generally apply to other property in the neighborhood. A variance may be granted only when the practical difficulty or undue hardship complained of is due to the general conditions of the neighborhood that may reflect an undue stringency of the ordinance itself. A hardship peculiar to the applicant, as distinguished from others affected by the general rule, must be shown. The fact that property may be utilized more profitably will not be considered adequate to justify the board in granting a variance.

A special exception to the building setback, front yard, side yard, rear yard, plot coverage and height requirements may be approved by the Board of Adjustment for historic districts and for designated historic properties if the application complies with the intent of the "Architectural and Historic Guidelines – Burlington Historic District" and if first recommended by the Historic Resources Commission provided that the approved application will not constitute a threat to public safety.
(Amendment adopted May 21, 1991)

3. To Issue Special Use Permits for Certain Uses: The board may issue a Special Use Permit for certain uses in certain districts, as indicated in Sections 32.11 and 32.13 of this chapter. The procedure for processing applications for such permits is given in 32.13:B.1. The consideration by which the board must be guided are given in 32.13:B.4.

- L. Rehearings: The board shall refuse to hear an appeal or application previously denied if it finds there have been no substantial changes in conditions or circumstances bearing on the appeal or application.
- M. Review by Certiorari: Any person or persons, jointly or severally, aggrieved by any decision of the board or any taxpayer or any officer, department, board or bureau of the City of Burlington, within such period of time after the filing of the decision in the office of the board as determined by the board according to law, may present to a court of competent jurisdiction a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of illegality; whereupon such decision of said board shall be subject to review by certiorari as provided by law.